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$ The State of Andhra Pradesh, rep.by Principal Secretary to Government and Commissioner, UPA, Municipal Administration and Urban Development, Secretariat,Hyderabad and others.

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[1] 2005 (7) Supreme 399

THE HONOURABLE SRI JUSTICE P.S.NARAYANA

W.P.No.12956 of 2004
Dated:24-08-2006

Between:
Syed Jaweed Hussaini and another Petitioner

And
The State of A.P. rep. by Principal Secretary to Government And Commissioner, UPA, Municipal Administration and Urban Development, Secretariat, Hyderabad and others.

Respondents

THE HONOURABLE SRI JUSTICE P.S.NARAYANA

W.P.No.12956 of 2004

ORDER:

1. The writ petition is filed for a writ of Mandamus declaring the leasing of private land of an extent of Ac.18.00 gts. situated in Survey No.28 of Miyapur village of Serilingampally Mandal, Ranga Reddy District to the 4th respondent without acquiring under the provisions of the Land Acquisition Act by G.O.Ms.No.340, M.A. & U.D. Department dated 8.7.2003 as illegal, arbitrary, capricious, malafide and pass such other suitable orders.

2. The third and fifth respondents filed counter affidavits and a reply affidavit was also filed.

3. Sri Syed Shareef Ahmed, the learned counsel representing the writ petitioners had taken this court through the averments made in the affidavit filed in support of the writ petition. The facts and events commencing from the notification issued under Section 4 (1) of the Land Acquisition Act dated 6-7-1967, Section 5A enquiry dated 24-10-1969 and Section 6 declaration dated 16.4.1970 and Section 9 (3) and Section 10 notices dated 25.2.1972 and also had further drawn the attention of this court to relevant portion of the G.O.Ms.No. 340, MA & UD Department, dated 8-7-2003 showing the same as evacuee property and the stand taken in the counter affidavit to the effect the same is enemy property. The learned counsel also while further elaborating his submissions had drawn the attention of this court to a

decision of the Apex Court in **Union of India Vs. Raja Mohammed Amir Mohammed Khan,** [1] and would contend that in the light of the said decision, and also in the light of the land acquisition proceedings referred to supra and the inconsistent stand taken in the counter affidavit to the effect that the property is enemy property despite showing the same as evacuee property in the G.O. in controversy, the writ petitioners are bound to succeed and the writ petitioners in the peculiar facts and circumstances need not be driven to a civil court.

4. The learned Government Pleader for General Administration, representing R.1 to R.3 had taken this court through the averments made in the counter affidavit in general and paras 3,4 and 5 in particular and would maintain that originally Smt.Jeelani Begum was pattedar of the land bearing Survey No.28 at Miyapur village and she had migrated to Pakistan and obtained the citizenship of Pakistan on 2.4.1976 and hence she cannot get back the property held in her name in the country under the provisions of Enemy Property Act. The learned Government Pleader also further explained the scope and ambit of both the Administration of Evacuee Property Act 1950 and also the Enemy Property Act, 1968.

5. Sri Polisetti Radhakrishna, the learned counsel representing the 5th respondent would submit that the stand of the 5th respondent is very limited since 5th respondent-Commissioner Serilingampally Municipality was impleaded as a party in W.P.M.P.No.26914 of 2004. The counsel had taken this court through the averments made in the counter affidavit by the 5th respondent and would maintain that the 'Santa' is being conducted on the road margin of 200 feet road near Manjira pipeline land and green belt land but not in the land as specified by the writ petitioners and hence in the light of the stand taken by the 5th respondent in the counter affidavit, no further submissions need be made in counter to the allegations made in the affidavit filed in support of the writ petition.

6. Sri Nuti Rammohan Rao, the learned counsel representing respondent No.4, the present beneficiary under G.O.Ms. No.340 would maintain that the erstwhile Hyderabad State was merged into Indian Union at a later point of time and it may be that originally the property would have been governed by the Administration of Evacuee Property Act,1950 but in view of the changed situation, inasmuch as the owner of the property had migrated to Pakistan at a later point of time, the stand of applicability of the Enemy Property Act 1968 had been taken. At any rate, the learned counsel would contend that this would not seriously alter the situation for the reason that the petitioners may have to establish their case having approached this court and in the event of the very title being in controversy, it would be appropriate for the petitioners to approach a competent civil court and just a mere proceeding showing certain names in the course of land acquisition by itself may not be sufficient to grant the relief in favour of the writ petitioners.

7. Heard the counsel and perused the material available on record.

8. The second writ petitioner had sworn to the affidavit filed in support of the writ petition. It is stated that the petitioners are the G.P.As through K..Butchaiah dated 11.2.2004, heirs of late B.Nagamallaiah dated 17.6.2004 heirs of late Pochaiah dated 11-2-2004 and the heirs of late Tatikonda Pentaiah, who are the owners and possessors of the land in Survey No.28 of Miyapur village, Serilingampally Mandal, Ranga Reddy District. It is also stated that the said four persons possess the following extents of land in survey No.28:

(1) Butchaiah	2.00
(2) Nagamallaiah	12.00
(3) Pochaiah	2.00
(4) K.Pentiah	2.00
Total extent	18.00

9. It is further stated that Survey No.28 is of a larger extent of which the principals of the petitioners are the owners and possessors of the land. It is further stated that on a requisition of the Executive Engineer MWSS, Hyderabad, the authorities initiated land acquisition proceedings for laying Manjira water pipeline. The Government approved Section 4(1) notification and the same was published in the Gazette on 6.7.1967. The Land Acquisition Officer conducted enquiry under Section 5 A of the Act aforesaid and issued notice on 24.10.1969 to appear and to show the interest in the land etc. Thereafter, the declaration under Section 6 of the Act was issued and published in the Gazette dated 16.4.1970 conforming to the extent of 0.18 guntas only. It is also stated that as required under law the notice under Section 9(3) and Section 10 of the Act were issued and the Award passed on 25.2.1972 bearing No. J/4299/LA/1968 and that the land of the principals of the petitioners had not been affected as pipeline is not passing through the land but is passing through the land of Smt.Jeelani Begum, passed an Award in her favour for Rs.310.50 paise including solatium. It is further stated that the principals are in occupation and possession of the land the same was fenced, curiously on 23.6.2004, the subordinates of 4th respondent with the help of Revenue Officials trespassed into the land removed the fence and when questioned came to know that the Government had leased out the land to the 4th respondent and they supplied information immediately, the petitioners made application to the second respondent duly enclosing Award copy and other documents and requested to cancel the lease in respect of the land and thereafter another representation was made on 26.6.2004 to the second respondent to take action against the persons trespassing into the lands and highhanded action. The main grievance of the writ petitioners is that the valuable rights of the real owners of the property are affected and at the best, the land acquisition proceedings may be proceeded with. It is also stated that the revenue records also reflect

the names of these persons. However, it is stated that the pattadar passbooks issued in favour of other persons are not traceable. It is also stated that the so called lease and allotment made by the Government in G.O.Ms.No. 340 dated 8.7.2003 in respect of Survey No.28 part to the extent of Ac.18-00 gts without initiating land acquisition proceedings is illegal, arbitrary, capricious and malafide and the same had been questioned on the under noted grounds.

> *"(i) The impugned G.O.leasing the private land to the 4th respondent is without any authority and the state is estopped on the principles of estoppel in view of the earlier land acquisition proceedings of the year 1969.*
> *(ii)The state is estopped by approbating and reprobating having accepted title issued notices for enquiry u/s.5-A, 9 (3) and 10 of the L.A.Act and having passed the nil award cannot leased out the land to the 4th respondent without initiating the land acquisition proceedings and deprived the owners of their valuable properties, which is contrary to Article 300-A of constitution of India.*
> *(iii)The state having recognized the title to the property in Survey No.28, having initiated land acquisition proceedings and issued pattadar pass books cannot allot the private land to the 4th respondent. The action is wholly without jurisdiction and it amounts to gabbing by misuse of power vested in the state, which is contrary to Article 300-A of the constitution of India."*

10. The third respondent filed counter affidavit wherein it was pleaded that originally Smt Jeelani Begum is the pattedar of the land bearing Survey No.28 at Miyapur village and she had migrated to Pakistan and she obtained citizenship of Pakistan on 2.4.1976 and she cannot get back the property held in her name in the country under the provisions of Enmity Property Act. It is also stated that according to the provisions of the Enemy Property Act, if a person acquired the nationality of Pakistan, property of such person, should from the date of such acquiring nationality has to be treated as enemy and the property held by him or her will automatically vests with the custodian of the enemy property. It is also stated that hence the transactions made by the original owner who settled and obtained

citizenship of Pakistan of the subject property in favour of any has to be treated as null and void. Since the property has already deemed to have vested in the custodian of enemy property from 2-4-1976 onwards. It is also stated the Enemy Property Act was enacted in the year 1968 to provide continued vesting of enemy property vested in the custodian. The Government of India, Minister of Commerce issued a notification No. 12/2/65-A Pty dated 10-9-1965 and this notification was issued under the powers given under the rules and particularly Rule 133 (v) Sub Rule 1 of the Rules made under the Defence Act. According to the notification, the immovable property in India belonging to or held by or managed on behalf of all Pakistan nationals shall vest in the custodian of Enemy Property of India with immediate effect. It is also stated that under the provisions of the Act with the properties belonging to a person or persons who acquired Pakistan nationality would forego his /their rights of the property held in India and from the date of acquiring such nationality, the property automatically would vest in the custodian of enemy property of India. That the property held in the name of Smt.Jeelani Begum who acquired the Pakistan nationality on 2-4-1976. Therefore, on 2-4-1976 itself all the property belonging to her was vested with the Custodian of Enemy Property of Indian and hence the petitioners cannot claim any right over the suit property. It is also stated that the custodian of enemy property of India had issued authorization under Section 8 of the Enemy Property Act-1968 authorizing the Revenue Divisional Officer, Chevella Division to take such measures, as the authority considers necessary or expedient for the preservation and management of the enemy property under his jurisdiction. Accordingly the possession of the property in question had been taken over by the Government on 21.09.1984. It is further stated that the land acquisition proceedings had been taken place before the date of declaration of the land as enemy property. It is further averred in Para 5 of the affidavit that the land declared as enemy property and the Custodian of Enemy

Property of India had issued authorization under Section 8 of the Enemy Property Act, 1968 authorizing the Revenue Divisional Officer, Chevella Division to take such measures for preservation and management of enemy property under his jurisdiction and hence possession was taken on 21.9-1984. The Collector, Ranga Reddy District vide Letter No.LC4/756/2001 dated 11.11.2003 requested to hand over advance possession of Government land as mentioned in G.O.Ms.No.340 MA & UD Department dated 8-7-2003 to M/s. Reliance Industries Ltd., for establishment of fuel retail outlets and depot compliance along with copy of Panchanama, sketch and also send regular lease proposals. Accordingly, the advance possession of Government Land in Survey No.28 an extent of 15625 square metres had been handed over to Reliance Industries Ltd., on 23-12-2003 under cover of Panchanama and lease proposals also submitted to the Collector, Ranga Reddy District vide Deputy Collector & Manadal Revenue Officer, Serilingampally Mandal Lr.No.B/2439/2003 dated 15.07.2004 . Specific stand was taken that inasmuch as the property in question was declared as enemy property by the Custodian of India, the Pattedar cannot get back the property held in her name in the country under the provisions of the Enemy Property Act and hence initiating provisions under the Land Acquisition Act would not arise.

11. The 5th respondent filed counter affidavit taking a specific stand that in fact 'Santa' is being conducted on the road margin of 200 feet road near Manjira pipeline land and green belt land but not in land in controversy as alleged by the petitioners. It is also pleaded that it seems that the petitioners do not want the 'Santa' to be conducted even in the road margin and hence they filed the above writ petition making false allegations suppressing the material facts. Certain other factual details also had been narrated in the counter affidavit filed by the 5th respondent.

12. The 2nd petitioner filed reply affidavit. It was pleaded that admittedly Smt.Jeelani Begum was the owner and possessor of the

land and notices under Section 9(3) and Section 10 were issued to the petitioners in the year 1969.. It is also stated that the claim of the respondent that Smt.Jeelani Begum migrated to Pakistan under the provisions of the Enemy Property Act, 1968 and the property is vested in the State, the said assertion is unsustainable and unreasonable. It is also stated that the Enemy Property Act, 1968 was enacted consequent to the Chinese aggression in the year 1962 and it was amended by Act, 40 of 1977 after 1971 war. It is also stated that when the land in Survey No.28 of an extent of 18 acres was confirmed in the earlier proceedings in favour of the fathers of the petitioners the assertion that the land is enemy property is absolutely illegal. The State cannot go behind the gazette notification. It is also stated that when Section 4(1) notification under the Land Acquisition Act was issued treating the fathers of the petitioners as owners of the property now the State cannot turn around and say that the entire property belongs to the enemy. This assertion appears to be malafide.

13. It is true that in G.O.Ms.No.340 MA & UD dated 8-7-2003, it is shown as M/s. Reliance Industries Limited at Serial No.1 Miyapur, Survey No.28 and under the column of description of property, evacuee property located at national high way 9 behind green belt. Under the column Department for which the land belongs, evacuee property (revenue). Under the column land available, land an extent of 250 acres had been shown. Certain other particulars also had been shown and under the column area in square metres to be allotted on long lease 156-25.

14. Strong reliance was placed on the decision of the Apex Court i n **Union of India Vs. Raja Mohammed Amir Mohammed Khan** (supra) wherein the Apex Court at Paragraphs 27 and 28 observed as hereunder under:

> *"Counsel for the appellant laying stress on the provisions of Section 18 contended that only the Central Government can divest the Custodian of the enemy property by passing a general or special order directing*

that any enemy property vested in the Custodian under the Act shall be divested from him and be retuned in such manner as may be prescribed to the owner thereof or to such other person as may be specified in the direction and only there upon such property shall cease to vest in the Custodian and revest in such owner or such other person. Since in the present case no such order has been passed by the Central Government this Court cannot divest the Custodian of the property. We do not agree with this submission. In the present case the respondent filed several representations but the Central Government did not take a decision on them for years together. In such a situation the power of the Court is not taken away to pass appropriate orders in a case where the property which vested in the Custodian ceases to be enemy property, the same having vested in a citizen of India by way of succession after the death of the enemy subject.

Another interesting feature which can be taken notice of is that on a representation filed by the respondent the appellants agreed to release 25% of the property in favour of the respondent on production of proof of his having succeeded to the property of his father. It shows that the appellants accepted that the property could be released in favour of the respondent provided he had succeeded to it after the death of enemy subject. It further shows that the property could be released in favour of an Indian citizen provided he had succeeded to the estate. It further shows that the title of the enemy property does not vest in the custodian and it had vested in the custodian for the purposes of management, control and possession of the property only."

15. On the strength of this decision, submissions at length were made relating to the applicability or otherwise of the provisions of the Enemy Property Act, 1968 (hereinafter in short referred to as the (Act 34 of 1968). The Administration of Evacuee Property Act, 1950 (hereinafter in short referred to as the Act (31 of 1950) is an Act to provide for the administration of evacuee property and for certain matters connected therewith. Section 2 of the Act (31 of 1950) deals

with definition and Section 2 (d) of the said Act defines 'evacuee' as hereunder:

"Evacuee" means any person:

(i) who, on account of the setting up of the Dominions of India and Pakistan or on account of civil disturbances or the fear of such disturbances, leaves or has, on or after the 1st day of March,1947, left, any place in a State for any place outside the territories now forming part of India, or

(ii) who is resident in any place now forming part of Pakistan and who for that reason is unable to occupy, supervise or manage in person his property in any part of the territories to which this Act extends, or whose property in any part of the said territories has ceased to be occupied, supervised or managed by any person or is being occupied supervised or managed by unauthorized person, or

(iii) who has, after the 14th day of August,1947, obtained, otherwise than by way of purchase or exchange, any right to, interest in or benefit from any property which is treated as evacuee or abandoned property under any law for the time being in force in Pakistan, or

(iv) who has, after the 18th day of October,1949, transferred to Pakistan, without the previous approval of the Custodian, his assets or any part of his assets situated in any part of the territories to which this Act extends; or

(v) who has, after the 18th day of October,1949, acquired, if the acquisition has been made in person, by way of purchase or exchange, or, if the acquisition has been made by or through a member of his family, in any manner whatsoever, any right to, interest in, or benefit from, any property which is treated as evacuee or abandoned property under any law for the time being in force in Pakistan."

16. The Enemy Property Act, (Act 34 of 1968) is an Act to provide for the continued vesting of enemy property vested in the Custodian of Enemy Property for India under the Defence of India Rules 1962 (and Defence of India Rules, 1971) and for matters connect therewith. Section 2 of the (Act 34 of 1968) deals with the definitions. Section 2 (a) of the said Act defines 'Custodian' as hereunder:

" In this Act, unless the context otherwise requires,

"Custodian" means the Custodian of Enemy Property for India appointed or deemed to have been appointed under Section 3 and includes a Deputy Custodian and an Assistant Custodian of Enemy Property appointed or deemed to have been appointed under that section."

17. Section 2 (b) of the (Act 34 of 1968) defines "enemy" or "enemy subject" or "enemy firm" as hereunder:

> "enemy" or "enemy subject" or enemy firm" means a person or country who or which was an enemy, an enemy subject or an enemy firm, as the case may be, under Defence of India Act, 1962 and the Defence of India Rules, 1962,(or to the Defence of India Act, 1971 and the Defence of India Rules, 1971), but does not include a citizen of India."

18. Section 2 (c) of the (Act 34 of 1968) defines "enemy property" as hereunder:

> "enemy property" means any property for the time being belonging to or held or managed on behalf of an enemy, an enemy subject or an enemy firm;
>
> Provided that where an individual enemy subject dies in the territories to which this Act extends, any property which immediately before his death, belonged to or was held by him or was managed on his behalf, may, notwithstanding his death, continue to be regarded as enemy property for the purposes of this Act."

19. It is true that on careful reading of the provisions of the Act referred to supra and taking into consideration the object with which these legislations had been enacted, these operate slightly in different fields but may be that they may even overlap, this court is not inclined to express any further opinion in relation to the scope and ambit and the operation fields of the respective legislations since these aspects may not be germane for the purpose of disposal of the present writ petition.

20. In the light of the respective pleadings of the parties, it is no doubt true that some material is placed before the court relating to the land acquisition proceedings but however, in the light of the respective stands taken by the parties, there appear to be serious factual controversies between the parties. It is needless to say that the writ proceedings would be decided on the strength of the affidavits and the counter affidavits and the material papers which would be produced before the writ court. When the dispute relating to the title is seriously contraverted, the same may have to be gone into at length. This court is of the considered opinion that it would be always appropriate to give liberty to such parties to agitate their rights before a competent civil court. This court is conscious of the fact that some material is placed before this court by the writ petitioners relating to the land acquisition proceedings and also some assertions had been made in relation to some revenue entries, but it appears much water had flown in between, the subsequent events, and all other factual controversies inclusive of the applicability or otherwise of the legislations in question, conveniently may have to be gone into by the civil court in the light of the stands taken by the parties. Hence, all questions are left open.

21. With the above observations made supra, the writ petition is disposed of giving liberty to the writ petitioners to approach the competent civil court to have their rights adjudicated in relation to the subject matter of the writ petition.

22. Accordingly, the writ petition is disposed of. The parties shall bear their own costs.

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P.S.NARAYANA,J

Note: L.R.copy to be marked.

24-08-2006

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